



May 14, 2001

Mr. Thomas L. Cox, Jr.  
Director, Legal Affairs  
Parkland Health and Hospital System  
5201 Harry Hines Boulevard  
Dallas, Texas 75235

OR2000-1976

Dear Mr. Cox:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147156.

The Dallas County Hospital District (the "district") received a request for information on February 27, 2001. You have submitted copies of cases #06-1279 and #06-1280 and ask us to determine whether or not the information is subject to public disclosure. We note that in your letter to the requestor, you refer to documents responsive to requests #2 and #3. It does not appear that you have submitted to this office information responsive to requests #2 and #3. To the extent that you have not submitted information responsive to requests #2 and #3, we assume that you have released this information to the requestor. If you have not released information responsive to requests #2 and #3, you must do so at this time. *See Gov't Code §§ 552.301, .302.*

In Open Records Letter No. 2000-4910 (2000), we found that you had to release information responsive to the requestor's first request, including information relating to case #06-1279. Pursuant to section 552.301(f), a governmental body must release information and is prohibited from asking for a decision from the attorney general if the governmental body has previously requested and received a determination from the attorney general concerning the precise information and the attorney general determined that the information is not excepted from disclosure. Gov't Code § 552.301(f)(1)-(2). Because you have requested a second decision from this office for case #06-1279, we assume that the submitted documents were not responsive to the first request and, therefore, were not released pursuant to Open Records Letter No. 2000-4910 (2000). To the extent that the submitted documents were responsive to the first request, you must release these documents in accordance with Open Records Letter No. 2000-4910 (2000). Based on the assumption that the submitted information differs from the released information, we will address your arguments.

Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for a decision and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. You have not, however, stated any exceptions that apply to the submitted information. Further, section 552.301(e)(1)(B) of the Government Code requires a governmental body to submit a copy of the written request for information. You have not provided a copy of the written request as provided by section 552.301(e)(1)(B) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not demonstrated a compelling reason to withhold the requested information from disclosure. However, some of the submitted information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Accordingly, we will address this information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. Some of the submitted information reveals information obtained from a polygraph test which is governed by section 1703.306 of the Occupations Code. Section 1703.306 of the Occupations Code provides:

A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The board or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. In this instance, the requestor is an examinee in one test and, therefore, polygraph test information relating to the requestor must be released. However, we have marked polygraph information relating to other examinees which must be withheld under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

The submitted information also contains criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") and the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Thus, the district must withhold the CHRI, which we have marked.

Further, section 552.101 encompasses common law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Accordingly, the district must withhold the marked CHRI compiled by the district under section 552.101 of the Government Code and the holding in *Reporters Committee*.

We also note that portions of the submitted information may be excepted under section 552.117(1) of the Government Code. Section 552.117(1) of the Government Code excepts from public disclosure information relating to the home address, home telephone

number, social security number, and family member information of a current or former government employee, if the employee elected to withhold this information under section 552.024. Please note that whether a particular piece of information is protected by section 552.117(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a proper election must be made *prior* to the request for information. If the employees elected prior to the request to keep this information confidential under section 552.024, you must withhold the marked information under section 552.117(1) of the Government Code. If no timely election was made, then you may not withhold the marked information under section 552.117 of the Government Code.

We note that social security numbers may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* However, it is not apparent to us that the social security numbers were obtained or maintained by the district pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the district to obtain or maintain social security numbers. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or maintained pursuant to such a statute and are, therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution the district, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Gov't Code § 552.352. Prior to releasing the social security numbers, the district should ensure that these numbers were not obtained or maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

The submitted information also contains a driver's license number. Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold the marked driver's license number under section 552.130(a) of the Government Code.

In conclusion, you must withhold the marked information under section 552.101 in conjunction with section 1703.306 of the Occupations Code, as well as the CHR1 under section 552.101 of the Government Code. You must also withhold information excepted under section 552.117(1) for any employee that made a timely section 552.024 election. Further, social security numbers are confidential and must be withheld, if obtained or maintained by the district pursuant to any provision of law enacted on or after October 1, 1990. You must also withhold the marked driver's license number. You must release the remaining requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

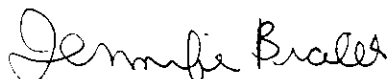
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer H. Bialek  
Assistant Attorney General  
Open Records Division

JHB/sdk

Ref: ID# 147156

Encl. Marked documents

cc: Mr. Thomas P. Wilkins  
5220 Cliff Haven Drive  
Dallas, Texas 75236  
(w/o enclosures)